APPENDIX A — OPINION OF THE SUPREME COURT OF GEORGIA DATED AND DECIDED MARCH 1, 1999

In the Supreme Court of Georgia

Decided: MAR 1 1999

S98A 1888. JAMES v. THE STATE

BENHAM, Chief Justice.

This appeal is from the felony murder conviction of Levy James, III.[1] On the day of the killing, James drove to the shoe repair establishment owned by his friend Steven Hood, and parked his car blocking the drive-through window. After Hood asked James three times to move the car, the men argued and Hood threatened James with physical violence. James got into his car as the argument continued, and when the unarmed Hood walked up to the car, shot him eight times, three of which shots would alone have been fatal.

1. The evidence adduced at trial was sufficient to authorize a rational trier of fact to find James guilty of felony

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1. The shooting occurred on April 24, 1996, and James was indicted for malice murder and felony murder in a true bill returned on June 4, 1996. A trial begun on January 15, 1997, resulted in his conviction for felony murder on January 18, for which he was sentenced on that same day to life imprisonment. His motion for new trial, filed January 29, 1997, and later amended, was denied on July 7, 1998. A notice of appeal was filed on July 27, 1998; the appeal was docketed in this Court on August 24, 1998; and the appeal was submitted for decision after oral argument on November 10, 1998.

murder beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (99 SC 2781, 61 LE2d 560) (1979); *Cole v. State*, 254 Ga. 286 (329 SE2d 146) (1985).

2. James enumerates as error the trial court's exclusion of expert testimony proffered by James on the subject of the effect marijuana use may have had on the victim. The evidence was intended to bolster James's claim that his shooting of Hood was an act of self defense. The expert witness testified in the defense's proffer that evidence of marijuana use was found in Hood's blood; that the amount found indicated use within a few hours before death, or indicated regular use and use within several days before death; and that marijuana use can have a disinhibiting function. On cross-examination, the witness admitted that there was no way to know whether Hood was actually under the influence of marijuana at the time James shot him. On redirect examination, the witness stated that he could not say what, if any, effect marijuana had on Hood at the time of his fatal argument with James. There was no evidence that Hood had smoked marijuana on the day of his death, the only evidence of his use being that he was a regular user. After considering that evidence, the trial court excluded the evidence as being too speculative.

That ruling is supported by the holding in *Hawes v. State*, 261 Ga. 64 (4) (402 SE2d 714) (1991), where, as here, the defense could not demonstrate how the use of drugs contributed to behavior of the victim that would have been relevant to James's justification defense. James was unable to show in his proffer that Hood had been using marijuana at a time close enough to the shooting to have had an

influence on him at the time of the shooting. Under those circumstances, the evidence of marijuana use was not relevant and properly excluded. Id.

3. During cross-examination of an eyewitness, defense counsel asked the witness to refresh his recollection with a statement the witness had given to the police. Defense counsel then contested several parts of the witness's trial testimony, asking at one point whether, since he was now testifying differently, the witness had been mistaken when he gave the statement. After cross-examination, the trial court permitted the State, over defense objection, to have the witness read the whole statement. Contrary to James's argument on appeal, that ruling was not error because where, as here, the veracity of a witness is at issue, and that witness is present at trial, under oath, and subject to cross-examination, the prior consistent out-of-court statement of the witness is admissible. *Edwards v. State*, 255 Ga. 149 (2) (335 SE2d 869) (1985).

4. James contends on appeal that the trial court erroneously denied his motions for mistrial on four occasions: when members of the victim's family appeared in the courtroom wearing pins showing the victim's dates of birth and death; when a police officer, in testifying, used the word "murder," which the trial court had forbidden; when a spectator in the courtroom called out in agreement with a witness's statement; and when a witness said, of James and the victim, "he just shot him down like a dog."

Whether to grant a motion for mistrial is within the sound discretion of the trial judge, and a decision based on

that discretion will not be disturbed on appeal unless abuse of discretion is shown. *Isaac v. State*, 269 Ga. 875 (3) (505 SE2d 480) (1998). A review of the record persuades us that no such abuse occurred in this case: the trial court ascertained that no juror had seen the message on the pins and admonished Hood's family not to wear the pins in the courtroom; the trial court determined that the witness's use of the word "murder" was inadvertent, and offered curative instructions which the defense declined; after the outburst by a spectator, the trial court instructed the jurors to disregard any outbursts and cautioned the spectators against any further disruption of the trial; and in response the witness characterizing James's action as shooting Hood down "like a dog," the trial court cautioned the jury that witnesses were called to testify to their observations, not their evaluations, and instructed the jury to disregard the comment the witness tacked onto his observations. Given the trial court's curative efforts, the inadvertent nature of the witnesses' remarks, and the lack of apparent prejudice, we find no abuse of discretion in the denial of James's motions for mistrial.

5. The trial court did not err in permitting the State to have Hood's fiancee identify a picture of him in life. "The general rule is that it is not error to admit a photograph of the victim while in life. [Cit.] However, the better practice is not to permit a victim's family member to identify the victim where other nonrelated witnesses are able to do so . . . . [Cit]" *Ledford v. State*, 264 Ga. 60 (14) (439 SE2d 917) (1994). Although the witness in this case was not a family member, she lived with Hood and referred to him in her testimony as the person she loved. Under those

circumstances, the trial court's decision to permit her to make the identification was subject to the criticism made in *Ledford*. However, there is no suggestion in the record that there was another witness less closely affiliated with Hood available to make the identification, and our review of the record persuades us that the identification by Hood's fiancee did not produce such an emotional display as might deprive James of a fair trial.

6. James sought to introduce as part of his showing of Hood's propensity for violence a document by which Hood settled a domestic violence matter. Since the trial court permitted testimony establishing the facts of the domestic violence incident, including Hood's prosecution and the settlement of that prosecution, the document would have been merely cumulative. "It is not error to exclude otherwise relevant evidence if its probative value is substantially outweighed by considerations of avoiding the needless presentation of cumulative evidence from which the jury might or might not draw a certain inference [Cit.]" *Green v. State*, 218 Ga. App. 648 (2) (463 SE2d 133) (1995). Because the document in question would have given the jury no information not already provided by other evidence concerning the incident, we find no error in the trial court's exclusion of it from evidence.

7. After the jury had retired to deliberate, it asked the trial court for anatomical charts the medical examiner had used to illustrate testimony regarding the location of Hood's wounds. The defense had earlier objected to the charts going out with the jury on the ground that the charts were "demonstrative evidence." The trial court admitted the

charts into evidence and sent them to the jury over James's objection.

James now enumerates that decision as error, contending that numbers written on the charts may have caused the jury to believe the wounds were inflicted in that order when there was no testimony to that effect, and that permitting the exhibits to go to the jury amounted to sending the State's argument into the jury room unrebutted. The first objection has no merit because the medical examiner testified clearly that he had no way of knowing the order in which the wounds were inflicted and that the numbers were there for his convenience only. Under those circumstances, we do not believe the jury could have been confused by the numbers on the charts. The other objection amounts to a "continuing witness" objection, which is not applicable to drawings or other documents which are "demonstrative evidence that serve only to illustrate testimony given by the witnesses." *Gabbard v. State*, 233 Ga. App. 122 (3) (503 SE2d 347) (1998). We find no error in the trial court's decision to send the charts to the jury room.

8. James contends the trial court erred in refusing to strike for cause a juror who stated that he felt the use of a gun to take another's life would not be justified under any circumstances. However, the juror also stated that his feelings about gun use were personal to him, that self-defense was a circumstance under which taking a life would be justifiable, and that he would be able to consider the issues in this case impartially notwithstanding his personal principles regarding gun use. Since the witness clearly did not hold so fixed an opinion that he would be unable to set

aside his personal feelings and decide the case on the evidence, we find no abuse of the trial court's discretion. *Mize v. State*, 269 Ga. 646(6a) (501 SE2d 219) (1998); *Holmes v. State*, 269 Ga. 124 (2) (498 SE2d 732) (1998).

9. James's contention that the trial court erred in giving a sequential change on murder, felony murder, and voluntary manslaughter as is forbidden in *Edge v. State*, 261 Ga. 865 (414 SE2d 463) (1991), is controlled adversely to him by *Hill v. State*, 269 Ga. 23 (3) (494 SE2d 661) (1998). There, as here, the trial court defined the three offenses and then explained the various verdicts that could be returned.

> Analyzing the trial court's charge in this case as a whole, as we must, we find that the charge was not impermissibly sequential. The charge regarding voluntary manslaughter was complete, and makes no indication that it could be considered only after malice and felony murder had been eliminated as possible verdicts. Similarly, nothing about the portion of the charge regarding the verdict form . . . precluded the jury's consideration of provocation or passion unless and until it found Hall not guilty of felony and malice murder.

Id. at 26. We note additionally that the trial court in the present case told the jury in the charge on voluntary manslaughter that it would not be authorized to return a verdict for malice murder or felony murder without first determining whether mitigating evidence, if any, would cause the offense to be reduced to voluntary manslaughter.

The charge was not, therefore, subject to the criticism to which the charge in *Edge* was subject.

10. James argues on appeal that the following portion of the jury instruction may have confused the jury regarding the State's burden of proof:

> No person shall be convicted of any crime unless and until every element of the alleged offense is proven beyond a reasonable doubt. The object of all legal investigation is the discovery of the truth, and the burden of proof rests upon the State to prove every material allegation of the indictment and every essential element of the crime charged beyond a reasonable doubt.

James does not explain how that charge could confuse the jury into thinking the State's burden of proof was less than beyond a reasonable doubt and we are unable to discern how that might be so. We note that a charge in almost identical language was found in *Gavin v. Vasquez*, 261 Ga. 568, 569 (407 SE2d 756) (1991), to be a sufficiently clear statement of the State's burden of proof. The giving of the charge in this case was not error.

11. The trial court did not err in giving the jury its instructions in writing after having charged the jury verbally. *Anderson v. State*, 262 Ga. 26 (3) (413 SE2d 732) (1992).

12. On appeal, James complains of several portions of the State's closing argument. At trial, however, he

complained of only one portion, requesting a mistrial as to that allegedly improper argument. Since this is not a case in which the death penalty has been imposed, appellate consideration of other portions of the argument was waived by James's failure to object to them at trial. *Metts v. State*, __ Ga. __ (Case No. S98A1785, decided February 8, 1999). The one portion of argument to which James did object was a reference to the deprivations Hood's family would suffer due to his absence. Argument which evokes sympathy for the family of a victim is not necessarily improper. "In fact, we have held that it is not error to remind the jury that family members of the victim do not now have a mother, wife or sister." *Dupree v. State*, 267 Ga. 38 (3) (472 SE2d 299) (1996). We conclude that the trial court did not abuse its discretion in denying James's motion for mistrial. *Isaac v. State*, supra.

Judgment affirmed. All the Justices concur, except Carley, J., who concurs in judgment only as to Division 5, and Hines, J., who concurs in judgment only as to Division 2.

APPENDIX B — EXCERPTS FROM TRIAL TRANSCRIPT

[commencing at page 162]

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MR. CITRONBERG: JUDGE, I THINK — I THINK THE STATE'S ARGUMENT MISSES THE POINT. I THINK THAT DR. HOLBROOK WOULD TESTIFY THAT IT IS A POTENTIAL, STUDIED RESULT OF MARIJUANA INGESTION BEING DISINHIBITION OF BEHAVIOR.

MR. JAMES TESTIFIED, I BELIEVE, IN RESPONSE TO CROSS-EXAMINATION, HE HAD NEVER SEEN STEVEN HOOD ACT [163] LIKE THIS BEFORE. NOW, MR. HOOD HAS ACTED LIKE THIS BEFORE. WE DON'T KNOW WHEN MR. HOOD INGESTED MARIJUANA AND WHEN HE DIDN'T. WE KNOW IT WAS WITHIN THREE DAYS, AND I SUGGEST THAT COCAINE STAYS IN THE BLOODSTREAM THREE DAYS, AS WELL. AND HE SAYS WE'RE NOT GOING TO ARGUE ABOUT THE COCAINE, THEN WE SHOULDN'T ARGUE ABOUT THE MARIJUANA, EITHER.

IT WAS IN HIS BLOOD STEAM. IT CAN CAUSE A DISINHIBITION OF BEHAVIOR, WITH A RESULTED INCREASE TOWARD IRRATIONAL BEHAVIOR AND VIOLENCE.

THAT TESTIMONY WAS VERY, VERY CLEAR.

WE'RE NOT SIMPLY THROWING IN THIS GUY WAS A MARIJUANA USER. BECAUSE, IF I WAS GOING TO DO THAT, I WOULD HAVE ASKED THOSE QUESTIONS. BUT I DIDN'T. IT'S VERY SPECIFIC, AND WE HAVE A VERY SPECIFIC REASON FOR IT, WHICH IS WHAT THE LAW ALLOWS. COULD IT HAVE AFFECTED THIS CASE? IS THERE A REASON FOR IT? AND WE ARGUED THAT, BASED ON MR. JAMES' TESTIMONY, AND BASED ON WHAT DR. HOLBROOK SAID, THIS IS CLEARLY ADMISSIBLE.

THE COURT: OKAY. BASED ON WHAT I'VE HEARD, I THINK IT'S INADMISSIBLE. I THINK IT'S MUCH TOO SPECULATIVE. IT COULD BE THAT YOU COULD MAKE OUT A CASE FOR IT THAT MIGHT BE APPROPRIATE, BUT YOU HAVEN'T DONE IT SO FAR. SO I'M RULING ON WHAT I HAVE . . .

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[642] * * *

MR. CITRONBERG: DURING THE CROSS-EXAMINATION OF MR. DURHAM, AT ONE POINT, THERE WAS AN OUTBURST FROM

THE AUDIENCE IN RESPONSE — I THINK THE WITNESS SAID, ONE OF MY CLOSEST FRIENDS GOT SHOT, AND ONE OF THE FAMILY MEMBERS OF THE VICTIM ANNOUNCED CLEARLY, YES, THAT'S RIGHT. IN MY HEARING, IF I COULD HEAR WHERE I WAS, I HEARD, YES, THAT'S RIGHT. I DON'T KNOW WHETHER YOUR HONOR HEARD IT.

THE COURT: I HEARD SOMETHING, BUT, FRANKLY, THE T.V. IS IN THE WAY, AND I COULDN'T SEE MUCH.

MR. CITRONBERG: I KNOW THE STATE COULD HEAR IT.

I GUESS IT'S MOTION FOR MISTRIAL NUMBER FOUR THAT DEALS WITH ARGUMENTS THAT WE RAISED IN MOTIONS. I THOUGHT WE HAD A RULING ON IT. WE'D AGAIN MOVE FOR A MISTRIAL. THE STATE WAS SUPPOSED TO HAVE INSTRUCTED THE FAMILY, AND YOUR HONOR INSTRUCTED THE FAMILY, THERE ARE TO BE NO OUTBURSTS. WE THINK IT'S PREJUDICIAL. IT'S CONTINUING TO DENY MY CLIENT HIS [643] RIGHT TO A FAIR AND IMPARTIAL TRIAL, A FAIR TRIAL AND IMPARTIAL JURY, AND WE OBJECT UNDER THE 5TH, 6TH, AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND

CORRELATIVE WITH GEORGIA PROVISIONS AND STATE STATUTORY PROVISIONS, AS WELL. AND WE MOVE FOR A MISTRIAL.

THE COURT: MR. STATHAM?

MR. STATHAM: WELL, I THINK IT WAS — IT WAS SOME — THAT'S — I DON'T DISAGREE WITH WHAT DEFENSE COUNSEL JUST SAID HAPPENED. HE FORGOT TO SAY THAT IT WAS IN RESPONSE TO ONE OF THE MOST AWFUL CROSS-EXAMINATIONS I'VE EVER HEARD, WHERE I THINK EVERYBODY IN THE COURTROOM WAS READY TO STRANGLE THE QUESTIONNAIRE [SIC].

THE COURT: WELL, LET'S DON'T GET INTO THAT.

MR. STATHAM: WELL, I UNDERSTAND.

BUT UNDERSTAND THAT'S WHAT IT WAS IN RESPONSE TO, I MEAN, THESE PEOPLE HAVE SAT AND LISTENED TO FOUR EYEWITNESSES TALK ABOUT THEIR SON AND BROTHER GET KILLED, AND THAT ONE COMMENT, BECAUSE THE GUY CAN'T EVEN GET AN ANSWER IN ON CROSS, I MEAN, IT WAS UNDER THOSE CIRCUMSTANCES THAT IT HAPPENED, SO I UNDERSTAND.

Appendix B

MR. CITRONBERG: JUDGE —

THE COURT: WELL, I'M GOING TO DENY THE MOTION [644] FOR THE MISTRIAL. I'M GOING TO INSTRUCT THE JURY TO DISREGARD ANYTHING THAT HAPPENS IN THE COURTROOM. AND, WHEN I COME BACK IN, I'M GOING TO TELL THE PEOPLE AGAIN, THE NEXT WORD THAT IS SAID BY ANYBODY OUT THERE AUDIBLY, THEY'RE GOING TO BE EJECTED FROM THE COURTROOM.

* * *

[659] A. STEVE SAID, WELL, BUST ME THEN. AND BY THIS TIME, I SAID, WELL, THEY MUST BE SERIOUS. AND THEN I SAW A PISTOL, AND I KIND OF STEPPED BACK. SO STEVE, ON THE WAY TOWARDS THE CAR — I DON'T KNOW WHY STEVE PROCEEDS TOWARD THE CAR, AND AS HE WAS COMING TOWARDS THE CAR, HE BEGAN TO SHOOT HIM. AND I DUCKED DOWN. I TOLD MY WIFE TO GET DOWN. AND I WAS — I STARTED CRYING, BECAUSE I KNEW THE GUY, AND IT WAS LIKE, I THOUGHT IT WAS JUST A LITTLE ARGUING OR WHATNOT. AND HE — I DON'T KNOW, HE JUST SHOT HIM DOWN LIKE A DOG.

Q. OKAY.

MR. CITRONBERG: EXCUSE ME. YOUR HONOR, CAN WE APPROACH?

THE COURT: YES, SIR.

(WHEREUPON, AN OFF-THE-RECORD DISCUSSION WAS HELD AT THE BENCH BETWEEN COURT AND COUNSEL.)

THE COURT: LET ME ASK YOU TO GO TO THE JURY ROOM, LADIES AND GENTLEMEN.

(WHEREUPON, THE JURY RETIRED FROM THE COURTROOM AT 4:09 P.M.)

MR. CITRONBERG: YOUR HONOR, PERHAPS WE CAN EXCUSE THE WITNESS WHILE WE'RE DISCUSSING THIS?

THE COURT: YES, SIR.

IF YOU WILL HAVE A SEAT, PLEASE, OUT IN THE HALL, PLEASE, SIR?

THE WITNESS: YES, SIR.

[660] (WHEREUPON, THE WITNESS STEPPED OUT INTO THE HALLWAY.)

THE COURT: YES, SIR?

MR. CITRONBERG: JUDGE, I DON'T GET IT. I DON'T — I DON'T GET IT. I — THIS IS A CONTINUING PROBLEM HERE. THIS IS THE

Appendix B

WORST AND THE LATEST OF THE CONTINUING LINE OF ANSWERS ELICITED IN VIOLATION OF COURT ORDERS, IN VIOLATION OF MOTIONS.

NOW WE HAVE A WITNESS SAYING, "HE SHOT HIM DOWN LIKE A DOG." NOW I KNOW WHEN I PREPARE A WITNESS, IF I WAS IN THE STATE, I WOULD MAKE SURE THAT THAT KIND OF COMMENT WASN'T TESTIFIED TO, PARTICULARLY NON-RESPONSIVELY TO A QUESTION.

HOW MUCH MORE? THIS IS — THIS IS SO PREJUDICIAL, IT'S UNBELIEVABLE. IT'S ABSOLUTELY UNBELIEVABLE. "HE SHOT HIM DOWN LIKE A DOG." THERE'S NOT A WHOLE LOT ELSE I CAN SAY ANYMORE.

I DON'T KNOW WHAT THEY'RE TALKING TO THEIR WITNESSES ABOUT. I DON'T KNOW IF THEY'RE TALKING TO THEIR WITNESSES. THIS IS — THIS IS A TRIAL BY INUENDO, AMBUSH, AND OUTRAGE. WE CAN'T KEEP UP. IT'S NOT FAIR. IT'S JUST NOT FAIR.

WE'D MOVE FOR A MISTRIAL UNDER THE 5TH, 6TH, AND 14TH AMENDMENTS, GEORGIA CONSTITUTIONAL PROVISIONS AND STATUTORY PROVISIONS AND CASE LAW.

Appendix B

[661] "HE SHOT HIM DOWN LIKE A DOG?" COME ON.

THE COURT: MS. DOMINGUEZ?

MS. DOMINGUEZ: YOUR HONOR, WHEN WE HAD THE EARLIER MOTION THAT, NOT TO INSTRUCT ANYONE — INSTRUCT YOUR WITNESSES NOT TO SAY "MURDER", I WENT OUTSIDE, AND I TOLD MY WITNESSES, YOU CAN'T SAY THE WORD MURDER; OKAY? YOU CAN'T SAY ANYTHING LIKE THAT. YOU CAN'T SAY MURDER.

I MEAN, THE QUESTION I ASKED HIM WAS, WHAT HAPPENED NEXT? I BELIEVE THAT'S THE QUESTION I ASKED HIM. I MEAN, IF YOU GIVE A CURATIVE INSTRUCTION —

WE TALKED TODAY, AND WE DIDN'T TALK ABOUT HIM SAYING THIS. I JUST INSTRUCTED HIM NOT TO SAY THE WORD "MURDER", AND THAT'S WHAT YOUR HONOR INSTRUCTED ME TO DO EARLIER TODAY. YOU INSTRUCTED THE STATE, AND I RAN OUTSIDE, AND I TOLD HIM THAT. I TOLD HIM AND MR. DURHAM.

THE COURT: WELL, LISTEN, LET'S PUT ASIDE THE ISSUE OF WHO SAID WHAT,

WHO TOLD WHOM TO SAY WHAT, OR ANYTHING. I'M NOT SUGGESTING THAT YOU SUGGESTED THOSE WORDS. BUT LET'S JUST PUT THAT ASIDE.

IT'S BEEN SAID. THIS JURY HAS HEARD IT. WHAT'S THE IMPACT OF THAT? HE SAYS MISTRIAL. YOU SAY WHAT?

MS. DOMINGUEZ: YOUR HONOR, I THINK IT WOULD [662] HAVE BEEN THE SAME IMPACT IF HE HAD SAID, HE GUNNED HIM DOWN. I REALLY DO. I MEAN, HE SHOT HIM DOWN. JUST THE FACT THAT HE ADDED THE WORD "DOG". I REALLY DON'T THINK — I MEAN, THEY'VE HEARD NUMEROUS WITNESSES SAY THE SAME THING.

THIS IS THIS YOUNG MAN STATING WHAT HIS OPINION WAS, AND HE SAW THIS. I MEAN, HE WAS TELLING WHAT THE IMPACT IT HAD ON HIM. HE WAS SAYING HOW HE WAS CRYING, AND HE DUCKED DOWN, AND HE WAS BASICALLY TELLING US WHAT HE THOUGHT AND WHY. HE WAS JUST EXPRESSING HIS OPINION.

MR. CITRONBERG: JUDGE, THE REASON WE HAVE RULES OF EVIDENCE IS TO NOT TO HAVE, "HE SHOT HIM DOWN LIKE A DOG," HE BUTCHERED HIM LIKE A HOG, HE

HUNG HIM OUT TO DRY, HE SLAUGHTERED HIM LIKE A LAMB. THIS IS TESTIMONY FROM A WITNESS, ELICITED BY THE STATE OF GEORGIA. IT'S NOT PERMISSIBLE. IT'S OUTRAGEOUS. IT'S OUTRAGEOUS. WE'VE HAD IT ONCE ALREADY. THIS IS A LOT WORSE.

THE COURT: ALL RIGHT. I'M GOING TO RESERVE RULING ON THAT, AND WE'RE GOING TO PROCEED WITH THIS WITNESS' TESTIMONY.

MS. DOMINGUEZ: YOUR HONOR, MAY I BE EXCUSED TO GO OUTSIDE AND TELL HIM NOT TO SAY THAT AGAIN? I MEAN, HE HASN'T BEEN IN HERE FOR THIS. I'D JUST LIKE [663] TO INSTRUCT HIM NOT TO SAY THAT, OR ANYTHING LIKE THAT, AGAIN.

THE COURT: YES.

MS. DOMINGUEZ: OKAY. MAY I LEAVE?

THE COURT: (NODS AFFIRMATIVELY.)

(WHEREUPON, MS. DOMINGUEZ LEFT THE COURTROOM MOMENTARILY.)

MR. CITRONBERG: JUDGE, ARE YOU GOING TO STRIKE THAT COMMENT?

Appendix B

THE COURT: YES, SIR.

MR. CITRONBERG: JUDGE, I HAVE AN OBJECTION, EVEN IF YOU DO STRIKE IT. AND MY MOTION FOR MISTRIAL CONTINUES.

THE COURT: YES, SIR, IT DOES. AND MY RESERVATION OF THE MOTION CONTINUES PAST THAT.

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APPENDIX C — ORDER OF THE SUPREME COURT OF GEORGIA DENYING MOTION FOR RECONSIDERATION DATED MARCH 18, 1999

SUPREME COURT OF GEORGIA

Case No. S98A1888 Atlanta, March 18, 1999

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

LEVY JAMES, III v. THE STATE

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.